

Continuous Boarding

Introduction

For the past eighteen months the Commission has been studying the usefulness of the boarding restriction that the Commission imposed when the first excursion gambling boats were licensed in May 1994. The Commission's review was prompted by its reservations about the value of the boarding restriction. In addition, in January 1998, the *Joint Committee on Gaming and Wagering* recommended that the boarding restriction be revised to be consistent with the laws enacted to regulate riverboat gambling.³⁰ The Committee suggested that the revisions should ensure the public safety and provide economic benefits to the citizens of the state.

History of the Boarding Restriction

The original referendum approved by the voters in 1992 that legalized riverboat gambling, provided for both cruising and dockside riverboats.³¹ The law also required that riverboat operators pay an admission fee for each patron embarking on a cruise.³² The original law contained no provisions imposing or implying a restriction on the time during which patrons could board, whether the boat was dockside or cruising. Similarly, neither of the two constitutional amendments approved by the voters to allow riverboat gambling contained any provisions relating to a boarding restriction.

The boarding restriction is a creation of the Gaming Commission. When the Commission licensed the first two riverboat gambling operations in May 1994, it had to determine how to equitably collect the admission fees required by law. In addition, since one riverboat, the President Riverboat Casino on the *Admiral* was continuously docked, while the other, St. Charles Riverfront Station, cruised, the Commission needed to adopt boarding procedures that prevented one operator from obtaining a competitive advantage over the other. The result was a Commission ruling that the *Admiral* would have to conduct "simulated cruises" whereby boarding would be restricted during the time when passengers aboard the St. Charles riverboat would be cruising.

The first simulated cruises were imposed by order of the Commission's executive director. All riverboats were required to submit a cruise schedule, to be approved by the Commission. As required by rule, the cruises could not be less than two, nor greater than four hours in length and allowed for a reasonable time for boarding and exiting the riverboat.³³ Initially, the Commission determined that 30 minutes was a reasonable time for boarding. However, it soon became evident that large crowds and the special accommodations needed for disabled persons required additional boarding time. Therefore, in September 1994, the Commission extended the

³⁰The Committee found that "the boarding time restriction is a regulatory matter. This restriction was implemented by the Gaming Commission by policy and is not required by statute." Joint Committee on Gaming and Wagering Annual Report, 1998, page 6.

³¹ House Bill 149, TAFP, 86th General Assembly. Section 1 (7) and (9) and Section 8.5. The referendum was adopted by the voters on November 3, 1992 with 1,397,750 in favor and 839,568 opposed.

³² Id, Section 9.

³³ This issue was a primary focus of the Joint Committee on Administrative Rules' hearings on the Commission's initial rules in 1993-94. The Committee expressed strong feelings that cruise times should be no less than two hours but at no time demanded that a boarding restriction be imposed. The original rules did not contain a boarding restriction. It was added in 1995.

boarding time to 45 minutes.

The Boarding Restriction and the \$500 Loss Limit

As the Missouri experience with riverboat gambling evolved, the boarding restriction became a component of enforcing the five hundred dollar loss limit. The boarding restriction prevented patrons from leaving the gaming area after the first 45 minutes and attempting to fraudulently obtain a second loss limit card. Because patrons would not be able to enter the casino until the next cruise, it was believed that efforts to circumvent the loss limit could be reduced.³⁴

After several years of monitoring patron behavior, it has become apparent that boarding restriction is, at best, a nominally effective tool in enforcing the loss limit. Once patrons familiarize themselves with the procedures, those who are determined to circumvent the loss limit develop ways to do so. While Commission agents and casino employees identify a number of loss limit violators, these patrons often report that they have been able to circumvent the limit undetected on previous occasions. Because there is no penalty for patrons violating the loss limit, the fear of being detected is minimal.³⁵

Therefore, the Commission began investigating new methods to enforce the loss limit. In addition to staff research, the Commission conducted two public hearings on continuous boarding in April and May 1999.³⁶ During the hearings, it was asserted that new systems could be developed to enforce the loss limit while permitting patrons to board at will. In order to test the proposed systems, the Commission authorized a pilot project on continuous boarding in August 1999.

The proposed systems varied to account for the differences in the individual properties and available equipment. Advances in technology allowed some to use electronic cards, similar to debit cards or those used to access hotel rooms. These cards allow licensees to create a unique identity for each patron and track their buy-in for each gaming session. In addition, some properties have implemented systems similar to those used in amusement parks and dance clubs whereby an invisible stamp is used to identify patrons. The stamp prevents a patron from obtaining more than one buy-in card which is critical to the enforcement of the loss limit. The pilot project allows the Commission to test all these systems to determine their effectiveness in enforcing the \$500 loss limit.

The Commission has found that the time that a patron enters or reenters a casino is not

³⁴ In past years the Commission has recommended that legislation be adopted imposing a penalty on patrons that violate the loss limit. Such legislation has not advanced beyond a committee hearing. The Commission continues to advocate the adoption of such a penalty.

³⁵ A frequently used analogy for the loss limit is the old 55 mph speed limit. However, this analogy is flawed in two important ways. First, the 55 mph hour speed limit was regularly violated by a majority of drivers while the loss limit is violated by a minute percentage of casino patrons. The electronic monitoring systems have enabled the Commission to track the number of patrons that buy-in for the full \$500 during a gaming session. The number rarely rises above 2% of total patrons. The other important distinction is that when a motorist was caught violating the 55 mph speed limit, they were issued a ticket and paid a fine. There is no such penalty for violating the loss limit.

³⁶ Hearings were conducted on April 27, 1999 in St. Louis and May 5, 1999 in Kansas City. Transcripts are available.

critical to the enforcement of the loss limit. It is more important to establish procedures to prevent a patron from obtaining more than one implement needed for buy-in. While some patrons will devise ways to circumvent even the most restrictive procedures, this illustrates the deficiencies in the loss limit and the difficulties inherent in the government micro-managing consumer behavior. Think of requiring all restaurants and bars to limit customers to a specified number of drinks per two hour period. It might be laudable in theory but cumbersome and, therefore, ineffective in practice.

The Boarding Restriction's Impact on Other Regulatory Priorities

While the loss limit is an important regulatory issue, it is not the *only* regulatory requirement. One of the Commission's principal responsibilities is to ensure that gambling games are conducted in a safe environment and that only those of legal age are allowed to access the casino.

The Commission's two public hearings played an important role in reviewing the advisability of retaining the boarding restriction. The bulk of the public comment emanated from casino patrons who testified about their repugnance for the restriction which they find to be frustrating, inconvenient, patronizing and unnecessary.³⁷ Moreover, many casino employees appeared to inform the Commission that the boarding restriction made the job of fulfilling their regulatory responsibilities more difficult. These employees testified that the boarding restriction:

- Creates a bottleneck of patrons that moves progressively from the parking lot, to ticketing, to the turnstiles, to the cage.
- The unnecessary crowd creates an atmosphere where it is difficult to meet regulatory obligations.
- The bottleneck of patrons makes it more difficult to identify underage or intoxicated patrons, excluded persons and problem gamblers.
- The impatient crowd presents safety concerns, especially for elderly and disabled patrons.

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³⁷ Bill Sinclair testified that "There is no logic, of course, from a customer standpoint. Believe me there's nothing less tourist friendly than someone have to make a phone call to find out if they can get on a facility and then finding out, 'well you can in an hour and half from now because you couldn't get there in time.' " Edward Corbet said that "What I want to emphasize is that an hour and twenty minutes is just too long to sit around and wait for things to happen." Kathy Franke stated that she feels "like I'm being put in a corral of cattle" waiting to get into the casino. Finally, Marly Yance testified that she wanted to "change the outdated, unnecessary and inconvenient boarding restrictions. We're not children and we shouldn't be treated that way." From Missouri Gaming Commission transcripts of public hearings on the boarding restriction.

The Commission discovered that by eliminating the boarding restriction, it could allow for a more gradual flow of casino patrons, thus making it easier to spot loss limit violations, identify underage patrons, intoxicated patrons and those who have voluntarily excluded themselves because they are problem gamblers. In addition, the elimination of the boarding restriction eliminates the troubling safety concern created by hurried patrons rushing to the casino in order to get there in time for boarding.

The Commission found little validity in the testimony of those who opposed the removal of the boarding restriction. Their testimony suggested that the Commission did not have the authority to remove the boarding restriction arguing that it was a decision for the legislature.³⁸ They also argued that it would lead to an increase in problem gambling. The Commission finds no evidence that continuous boarding will have any affect on problem gambling.³⁹

³⁸ Arguments that the Commission is acting beyond its authority, ignoring existing law or legislative intent fail in light of the fact that the Commission itself created the boarding restriction. The only expression of legislative intent is a 1998 recommendation of the Joint Committee on Gaming and Wagering that the Commission review its policy on the boarding restriction and make it consistent with state law. Since state law does not mention a boarding restriction, it seems clear that the Committee recommendation was to remove it. It should also be noted that the statutes specifically give the Commission authority “To adopt standards under which all excursion gambling boat operations shall be held...”. Section 313.805(3), RSMo. Moreover, the fact that legislative efforts to require removal of the boarding restriction have failed are as much evidence of legislative intent that it is a decision for the Commission as they are of legislative support for the boarding restriction. Finally, should the legislature disagree with the Commission’s decision on the boarding restriction, they have the power to reverse the decision by establishing rules for boarding in the gaming statute. It has previously not chosen to do so.

³⁹ Keith Spare, the Chairman of the Missouri Council on Gambling Concerns, testified at the public hearings on the boarding restriction and specifically said that he was not there to speak against removing the restriction. Instead he focused on the need for dedicated funding to treat problem gamblers and establish a prevention program. The Commission supports Mr. Spare’s comments and provides a more detailed request in the following section on problem gambling.